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No. 467

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

ARMCO STEEL CORPORATION, M. A. HANNA COMPANY, IRON ORE COMPANY OF CANADA, NATIONAL STEEL CORPORATION (WEIRTON STEEL COMPANY DIVISION), REPUBLIC STEEL CORPORATION, WHEELING STEEL CORPORATION, AND THE YOUNGSTOWN SHEET AND TUBE COMPANY, *Appellants*,

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., *Appellees*.

**On Appeal from the United States District Court for the District of Maryland**

## JURISDICTIONAL STATEMENT

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September 16, 1957

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Page

OPINIONS BELOW ---------- 2

JURISDICTION ---------- 2

QUESTIONS PRESENTED ---------- 3

STATUTES INVOLVED ---------- 4

STATEMENT ---------- 5

THE QUESTIONS PRESENTED ARE SUBSTANTIAL -- 10

I. IN ITS TREATMENT OF THE ISSUE OF IRON ORE RATE PARITY BETWEEN PHILADELPHIA AND BALTIMORE TO THE WHEELING-STEUBENVILLE-YOUNGSTOWN AREA THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN ITS CONCLUSION AS TO THE NATURE OF THE FINDINGS REQUIRED OF THE INTERSTATE COMMERCE COMMISSION ---------- 10

II. THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN SUBSTITUTING ITS JUDGMENT FOR THE FINDINGS AND CONCLUSIONS OF THE INTERSTATE COMMERCE COMMISSION WHICH WERE ADEQUATE IN THEMSELVES AND AMPLY SUPPORTED BY THE SUBSTANTIAL EVIDENCE OF RECORD ---------- 12

III. IN ITS TREATMENT AND DISPOSITION OF THE ISSUE OF PHILADELPHIA-BALTIMORE IRON ORE RAILROAD FREIGHT RATE PARITY TO THE WHEELING-STEUBENVILLE-YOUNGSTOWN AREA THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN APPLYING INCORRECTLY TO THE EVIDENCE OF RECORD THE PERTINENT PROVISIONS OF THE INTERSTATE COMMERCE ACT AND THE NATIONAL TRANSPORTATION POLICY ---------- 14

IV. THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN ITS TREATMENT AND DISPOSITION OF THE ISSUE OF PHILADELPHIA-BALTIMORE RAILROAD FREIGHT RATE PARITY TO THE WHEELING-STEUBENVILLE-YOUNGSTOWN AREA BY SUBSTITUT-

Page

ING THE JUDGMENT OF THE COURT FOR THAT OF THE INTERSTATE COMMERCE COMMISSION AND ORDERING THE PROCEEDING REMANDED FOR SO-CALLED ESSENTIAL BASIC FINDINGS ON OCEAN TRANSPORTATION COSTS AND PROSPECTIVE TONNAGE IMPORTATIONS OF FOREIGN IRON ORE, WHEN ADEQUATE FINDINGS THEREON WERE ACTUALLY MADE BY THE COMMISSION ..... 19

CONCLUSION ..... 20

APPENDIX A ..... 1a

APPENDIX B ..... 37a

APPENDIX C ..... 39a

APPENDIX D ..... 41a

APPENDIX E ..... 46a

## TABLE OF CASES

Alabama G.S.R. v. United States, 340 U.S. 216 ..... 3, 11
Ayrshire Corp. v. United States, 335 U.S. 573 ..... 13
Baltimore and Ohio Railroad Co. v. U.S.A., 151 F. Supp. 258 ..... 15, 16, 18
Board of Trade v. United States, 314 U.S. 534 ..... 13
Illinois Central R. Co. v. Interstate Comm. Comm., 206 U.S. 441 ..... 16
Interstate Commerce Commission v. Union Pacific Railroad Co., 222 U.S. 541 ..... 14, 16
Iron Ore From Eastern Ports To Central Freight Association Points, 291 I.C.C. 527, 299 I.C.C. 195 ..... 2, 4, 8, 15, 16, 18, 19
Labor Board v. Waterman S.S. Co., 309 U.S. 206 ..... 17
Luckenbach S.S. Co. v. United States, 122 F. Supp. 824, Affirmed 347 U.S. 984 ..... 11, 20
Mississippi Valley Barge Co. v. U.S., 292 U.S. 282 ..... 12, 14, 20
New York v. United States, 331 U.S. 284 ..... 13
Rochester Tel. Corp. v. U.S., 307 U.S. 125 ..... 3
St. Joseph Stock Yards Co. v. United States, 298 U.S. 38 ..... 16
Swayne & Hoyt, Ltd. v. U.S., 300 U.S. 297 ..... 17
United States v. Louisiana, 290 U.S. 70 ..... 12, 20
United States v. Pennsylvania R. Co., 323 U.S. 612 ..... 3
U. S. v. Great Northern R. Co., 343 U.S. 562 ..... 3
U. S. v. Pierce Auto Lines, 327 U.S. 515 ..... 17
Universal Camera Corp. v. Labor Board, 340 U.S. 474 ..... 14, 17, 20
Virginian Ry. v. United States, 272 U.S. 658 ..... 3, 16

STATUTES


| | Page |
|---|---|
| National Transportation Policy, 49 U.S.C. Preceding Section 1 | 3, 4, 13, 17, 18 |
| 28 U.S.C. 1336 | 2 |
| 28 U.S.C. 1253 | 2 |
| 28 U.S.C. 2101(b) | 2 |
| Interstate Commerce Act | |
| Section 1(5) | 4 |
| Section 3(1) | 4 |
| Section 14(1) | 4, 11 |
| Section 15(1) | 4 |
| Section 15(7) | 4 |
| Section 15a(2) | 4 |

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ARMCO STEEL CORPORATION, ET AL., *Appellants*,

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellees.*

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**On Appeal from the United States District Court for the District of Maryland**

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## JURISDICTIONAL STATEMENT

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Pursuant to Rule 13, Paragraph 2, of the Revised Rules of this Court, Appellants, Armco Steel Corporation, M. A. Hanna Company, Iron Ore Company of Canada, National Steel Corporation (Weirton Steel Company Division), Republic Steel Corporation, Wheeling Steel Corporation and The Youngstown Sheet and Tube Company, intervening defendants below, submit herewith their statement disclosing the basis upon which the Supreme Court of the United

States has jurisdiction on appeal to review the final order, judgment and decree of the United States District Court entered in this cause on May 22, 1957. Notice of appeal was filed in the United States District Court on July 19, 1957. Substantial questions are presented by this appeal.

## OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland is reported at 151 F. Supp. 258. A copy thereof is attached as Appendix A. A copy of the final decree of the United States District Court, entered May 22, 1957, is attached as Appendix B. The opinions of the Interstate Commerce Commission, dated February 5, 1954 and October 1, 1956, are reported as *Iron Ore From Eastern Ports to Central Freight Association Points*, 291 I.C.C. 527 and 299 I.C.C. 195,* respectively.

## JURISDICTION

This action was brought under 28 U.S.C. § 1336 to enjoin and set aside, in part, an order of the Interstate Commerce Commission. The final decree of the United States District Court for the District of Maryland was entered on May 22, 1957. These appellants filed their notice of appeal in that court on July 19, 1957. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28 United States Code, Sections 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the decision, judgment and decree on direct appeal in this

* The Interstate Commerce Commission's order therein, entered October 1, 1956, is attached as Appendix C.

case: *Virginian Ry.* v. *United States*, 272 U.S. 658; *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125; *United States* v. *Pennsylvania R. Co.*, 323 U.S. 612; *Alabama G.S.R. Co.* v. *United States*, 340 U.S. 216; and *U. S.* v. *Great Northern R. Co.*, 343 U.S. 562.

## QUESTIONS PRESENTED

1. Whether the U. S. District Court erred in holding that the order of the Interstate Commerce Commission dated October 1, 1956 insofar as it approves the tariff schedules of the Pennsylvania Railroad Company on iron ore from Philadelphia filed to become effective February 9, 1953 is not supported by essential basic findings, and in remanding the proceedings to the Interstate Commerce Commission to make more explicit findings as instructed by the Court in its opinion filed herein?

2. Whether the U. S. District Court erred in remanding the proceedings to the Interstate Commerce Commission, for more explicit findings as instructed by the Court in its opinion, by substituting the judgment of the U. S. District Court for that of the Interstate Commerce Commission on the issues involved when the findings and conclusions of the Commission that the railroad tariff schedules on iron ore filed to become effective on February 9, 1953 from Philadelphia to destinations in the Youngstown, Wheeling, Steubenville areas are just, reasonable and otherwise lawful under the Interstate Commerce Act and the National Transportation Policy are fully supported by substantial evidence on the whole record?

3. Whether the U. S. District Court erred both in its analysis, as set forth in its Opinion, of the Report

and Order of the Interstate Commerce Commission, dated October 1, 1956 in Investigation and Suspension Docket No. 6074, *Iron Ore From Eastern Ports to Central Freight Association Points,* and in its interpretation, and application to the evidence of record, of the provisions both of the National Transportation Policy [49 U.S.C. preceding Section 1] and of the Interstate Commerce Act, Sections 1(5), 3(1), 14(1), 15(1), 15(7), and 15a(2) [49 U.S.C. 1(5), 3(1), 14(1), 15(1), 15(7) and 15a(2)]?

4. Whether the U. S. District Court erred in remanding these proceedings to the Interstate Commerce Commission, to make more explicit findings as instructed by the Court in its opinion, by drawing inferences, findings and conclusions *de novo* from the evidence of record contrary to those of the Commission on the issue of the lawfulness of the carrier-initiated rates on iron ore from Philadelphia to the Youngstown, Steubenville, Wheeling areas, published to become effective February 9, 1953, when the inferences, findings and conclusions reached unanimously by all ten participating Commissioners, that the aforesaid railroad freight rates are in all respects lawful, are fully supported by substantial evidence on the whole record?

## STATUTES INVOLVED

The National Transportation Policy [49 U.S.C. preceding § 1] and Sections 1(5), 3(1), 14(1), 15(1), 15(7) and 15a(2) [49 U.S.C. §§ 1(5), 3(1), 14(1), 15(1), 15(7), and 15a(2)] of the Interstate Commerce Act, as amended, the statutory provisions involved, are set forth in Appendix D hereto.

## STATEMENT

This case comes before this Court on appeal from a judgment, order and decree of the United States District Court for the District of Maryland reversing in part and remanding to the Interstate Commerce Commission a decision and order of the I.C.C. pertaining to the lawfulness of the railroad freight rates on imported iron ore transported from Baltimore, Philadelphia and New York to 17 destinations west of Pittsburgh, Pa. in the so-called Wheeling, W. Va., Steubenville and Youngstown, Ohio steel producing areas. The specific destinations and the rates on iron ore which have been approved by the Interstate Commerce Commission, and which became effective February 19, 1954, are set forth in Appendix E attached hereto.

Until recent years the steel industry of the United States, and particularly that located in the Ohio, West Virginia and western Pennsylvania area, had been dependent upon the so-called upper lake ranges in Minnesota, Wisconsin and Michigan as the predominant if not all but exclusive source of iron ore consumed. This iron ore was transported via vessel to the lower Lake ports, whence it was transported by railroad to the destinations involved in this proceeding. A long-established characteristic of the domestic iron ore freight rate structure, approved by the I.C.C. after most thorough investigations, has been the availability through the years of *at least two ports* from which this iron ore could be transported to the interior consuming points *at a parity* of railroad freight rates.

With the enormous drain upon the domestic iron ore resources of the United States occasioned by two World Wars and the subsequent increasing need for iron ore in the expanding American economy, the steel

producing companies, including these appellants, embarked upon a program of development of foreign sources of this vital raw material. Since World War II there has been a steady and increasing importation of iron ore into the United States, from foreign sources such as Liberia, Venezuela, Brazil, Chile, Sweden, Peru, and in the last few years from Labrador.

For over fifty years a parity of railroad freight rates applicable to the transportation of iron ore from both Philadelphia, Pa. and Baltimore, Md. had been in effect to Pittsburgh, Pa. However, to points west of Pittsburgh, including the 17 destinations in the Wheeling-Steubenville-Youngstown area here involved, the railroad freight rates on iron ore from Baltimore, Md. were 20 cents per gross ton under those applicable from Philadelphia. As above noted, until recent years the movement of imported iron ore via these routes was non-existent or negligible.

In the light of the then prospective increasing movement of iron ore from foreign sources the railroads serving the ports of Baltimore and Philadelphia published reduced rates effective October 9, 1950 to Pittsburgh, Pa. again preserving the parity of rates on iron ore between the two ports. These appellants, receivers of iron ore in the Wheeling-Steubenville-Youngstown area, recognizing their need for imported iron ores, and engaged in competition with steel producers in the Pittsburgh district, likewise sought parity of iron ore rates from both Baltimore and Philadelphia to their destinations. Without such iron ore rate parity receivers of imported iron at Youngstown, Ohio, such as The Youngstown Sheet and Tube Company and Republic Steel Corporation, would be obliged to pay 20 cents per gross ton over the Pitts-

burgh rate if they routed iron ore from Baltimore, but 40 cents per gross ton over the Pittsburgh rate if they routed iron ore from Philadelphia. From Pittsburgh to Youngstown, using the Baltimore and Ohio Railroad [the dominant Baltimore line], the distance is 76 miles, whereas via the Pennsylvania Railroad [the dominant Philadelphia line], the distance from Pittsburgh to Youngstown is 66 miles.

After due consideration, the Pennsylvania Railroad voluntarily published, to become effective February 9, 1953, reduced rates on iron ore from Philadelphia to the 17 points in the Wheeling-Steubenville-Youngstown area at the same level as then in effect from Baltimore. For example, the rate of $2.71 per gross ton from Philadelphia to Youngstown was published, thus equalizing with Baltimore.

The railroads serving the ports of New York, N. Y. and Boston, Mass. likewise published reduced rates on parity with Baltimore, to seven system or on-line points in the destination area. Thereafter the Baltimore lines published a reduction of 20 cents per gross ton in the iron ore rates to the destinations involved from Baltimore, to become effective February 16, 1953. This was matched in turn by another reduction of 20 cents per gross ton published by the Pennsylvania Railroad from Philadelphia to the 17 destination points, effective March 11, 1953. The Pennsylvania thereby sought to restore the railroad rate parity on imported iron ore with Baltimore.

All the foregoing tariffs publishing the reduced rates commencing with those scheduled to become effective February 9, 1953 were suspended and made the subject of an investigation as to their lawfulness by the

Interstate Commerce Commission. By decision of February 5, 1954, reported as *Iron Ore From Eastern Ports To C. F. A. Points,* 291 I.C.C. 527, Division 2 of the Commission unanimously upheld the lawfulness of the rates from Philadelphia to the 17 points initially published to become effective February 9, 1953. Pursuant thereto, such rates became effective February 19, 1954 and parity of iron ore rates from Philadelphia and Baltimore to the seventeen destinations in the Wheeling-Steubenville-Youngstown area has been maintained since that date. Division 2 in the same decision found all the other rates under investigation not shown to be just and reasonable, and ordered them cancelled.

On petitions of certain parties, the proceedings were reopened by the Interstate Commerce Commission and further hearings held. The Boston and Maine and the New York, New Haven and Hartford railroads, in connection with the Delaware and Hudson and the Erie, published a rate of $2.71 per gross ton on imported iron ore from Boston to the Youngstown area, scheduled to become effective October 21, 1954, and which was the same as that previously published from those origins by the Erie and the New York Central. These tariff schedules were also suspended and embraced within the investigation.

By decision of October 1, 1956, reported as *Iron Ore From Eastern Ports To Central Freight Association Points,* 299 I.C.C. 195, the entire Interstate Commerce Commission [with one of the eleven members not participating] unanimously affirmed the action of Division 2 in upholding the lawfulness of the rate from Philadelphia, originally published to become effective February 9, 1953, which had brought about a railroad

rate parity on iron ore between Philadelphia and Baltimore to the Wheeling-Steubenville-Youngstown area. Five Commissioners voted to extend parity with Baltimore to New York as well. One Commissioner voted to extend the rate parity to Boston. The tariff schedules from Baltimore and Philadelphia, originally scheduled to become effective on February 16 and March 11, 1953, were again found not shown to be just and reasonable and were ordered to be cancelled.

Action was brought in the U. S. District Court for the District of Maryland by the Baltimore and Ohio Railroad Co. and other Baltimore interests to enjoin and set aside in part the aforesaid order, report and decision of the Commission. By its decision of April 26, 1957, and its order, judgment and decree of May 22, 1957, the U. S. District Court reversed the Interstate Commerce Commission on the issue of extending iron ore rate parity with Baltimore to New York. The Court also concluded that the order of the Commission dated October 1, 1956 was not supported by essential basic findings (1) as to the relative costs of shipping imported iron ore to the ports of Baltimore and Philadelphia, (2) and as to the traffic therein to be reasonably expected at these ports, if rate parity between the ports is continued or if the rate handicap of 20 cents per gross ton is again imposed upon the Philadelphia route to the Wheeling-Steubenville-Youngstown area.

The appeal of Armco Steel Corporation, et al., is specifically directed against the latter segment of the decision, judgment, order and decree of the Court below, pertaining to the issue of iron ore railroad rate parity to the Wheeling-Steubenville-Youngstown area from Philadelphia and Baltimore.

## THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This appeal presents substantial questions as to appropriate governing principles of federal administrative law in determining the respective spheres of authority (1) of the Interstate Commerce Commission and (2) of the federal courts when engaged in judicial review of the orders and reports of the I.C.C. As indicated below, the questions presented are so substantial as to require plenary consideration by the Supreme Court, with briefs on the merits and oral argument, for their resolution.

### I. IN ITS TREATMENT OF THE ISSUE OF IRON ORE RATE PARITY BETWEEN PHILADELPHIA AND BALTIMORE TO THE WHEELING-STEUBENVILLE-YOUNGSTOWN AREA THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN ITS CONCLUSION AS TO THE NATURE OF THE FINDINGS REQUIRED OF THE INTERSTATE COMMERCE COMMISSION.

As previously indicated these proceedings are vast in their scope, were the subject of two separate sets of hearings and two separate reports, decisions and orders, first by Division 2 of the I.C.C., and, finally, by the entire Interstate Commerce Commission. In both decisions all Commissioners participating were unanimous in upholding the lawfulness of the Philadelphia-Baltimore rate parity effected by the rates published from Philadelphia which became effective on February 19, 1954.

Both reports of the Commission, reported at 291 I.C.C. 527 and 299 I.C.C. 195, respectively, embody careful narration and analysis of the evidence, the findings of fact and the conclusions of law made by the Commission.

The I.C.C. specifically recognized the actual and prospective importations of iron ore from several sep-

arate foreign origins. It gave consideration to the extensive complex of factors bearing upon this actual and prospective movement of iron ore through the ports of Baltimore and Philadelphia, including *inter alia,* the elements of ocean transportation costs and the actual and prospective tonnages. At some length the Interstate Commerce Commission set forth its findings, both subsidiary and ultimate, upon which it concluded unanimously that the Pennsylvania Railroad, and the interveners in support, had sustained the burden of proof with respect to the lawfulness of the carrier-initiated iron ore rates from Philadelphia to the Wheeling-Steubenville-Youngstown area, published to become effective February 9, 1953 and which, after I.C.C. approval, became effective February 19, 1954.

However, the Court below found the I.C.C. report somehow deficient because the administrative agency had not indulged in extensive additional elaboration of the ocean transportation costs from one of the origins, Labrador, to the ports of Philadelphia and Baltimore, and further because the I.C.C. did not, in practical effect, *go outside the record before it,* with respect to actual tonnage movements of iron ore to the respective ports after the record was closed.

It is submitted that no such detailed specificity of findings as contemplated by the Court below is required under the governing statute. The Supreme Court has gone to great pains to point out that the provisions of Section 14(1) of the Interstate Commerce Act do not require the Interstate Commerce Commission to make excessively detailed findings of fact in a case of this nature. *Alabama G. S. R. Co.* v. *United States,* 340 U.S. 216, 227, 228; *Luckenbach S. S. Co.* v. *United States,* 122 F. Supp. 824, 827, 828, affirmed

347 U.S. 984; *United States* v. *Louisiana*, 290 U.S. 70, 80.

The matter was succinctly expressed by Mr. Justice Cardozo, speaking for a unanimous court, when he stated, in *Mississippi Valley Barge Co.* v. *U. S.*, 292 U.S. 282, 286, 287:

> "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body."

By that standard, on the issue of Baltimore-Philadelphia iron ore rate parity, the Court below was clearly in error in its conclusions as to the nature of the findings required of the I.C.C. in its report, decision and order.

**II. THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN SUBSTITUTING ITS JUDGMENT FOR THE FINDINGS AND CONCLUSIONS OF THE INTERSTATE COMMERCE COMMISSION WHICH WERE ADEQUATE IN THEMSELVES AND AMPLY SUPPORTED BY THE SUBSTANTIAL EVIDENCE OF RECORD.**

It is to be noted that all ten members of the Interstate Commission who participated in the decision and order of October 1, 1956 were unanimous in upholding as lawful the parity of railroad freight rates on iron ore to the Wheeling-Steubenville-Youngstown area on the basis which became effective from Philadelphia on February 19, 1954. Whatever may have been the differences of opinion on whether the parity of railroad freight rates should be extended to New York, there was hard core unanimous agreement on the Baltimore-Philadelphia parity.

The Supreme Court has long recognized the complex problems involved in the matter of railroad rate

regulation, in assessing and evaluating the evidence presented in records before the Interstate Commerce Commission. See *Board of Trade* v. *United States*, 314 U.S. 534, 546. The I.C.C., which is the administrative rate maker, is accorded broad discretion. *Ayrshire Corp.* v. *United States*, 335 U.S. 573, 593. The balancing and weighing of these interests is a delicate task, regarded by this Court as peculiarly a question committed to the judgment of the administrative body, based upon an appreciation of all the facts and circumstances affecting the traffic. *New York* v. *United States*, 331 U.S. 284, 347.

The Interstate Commerce Commission in its two decisions, reported at 291 I.C.C. 527 and 299 I.C.C. 195, evidenced a most careful analysis of the evidence of record. It considered a great complex of factors illustrative of which are: rate history, varying foreign sources of iron ore, comparative distances by ocean to the respective ports of entry including Baltimore and Philadelphia, comparative overland distances, facilities required at seaboard for receipt of foreign iron ore for transfer to railroad cars, the past, present and prospective tonnage movement of iron ore to the destinations involved, the basis for the carrier-initiated rates on iron ore under investigation, comparative earnings on the rates involved and other iron ore rates, as well as earnings on rates of other traffic, evidence as to comparative costs of transportation, the bearing of the provisions of the National Transportation Policy and of the Interstate Commerce Act.

That the court below would draw different inferences from those of the Interstate Commerce Commission is of no moment when a rational basis in the evidence of record for the I.C.C.'s conclusions appears

upon judicial review. At that juncture—and such is the case here—the judicial function is fulfilled. *Mississippi Valley Barge Co.* v. *U. S., supra,* 286, 287; *Universal Camera Corp.* v. *Labor Board,* 340 U.S. 474, 488.

It is submitted that the question here presented is substantial, requiring plenary action by this Court, on brief and oral argument. For the U. S. District Court, contrary to long-established principles of federal administrative law, particularly with respect to the Interstate Commerce Commission, in substance has gone beyond its proper sphere. The lower court has sought to substitute its judgment for that of the Commission on the issue of Baltimore-Philadelphia iron ore railroad freight rate parity. For, in disregard of the substantial evidence on the whole record, the court evaluated the wisdom and expediency of the I.C.C.'s decision, ignored the substantial evidence in the record as a whole in concluding that certain additional findings on issues already treated by the Commission should be made. In this the Court committed serious and prejudicial error. See *Interstate Commerce Commission* v. *Union Pacific Railroad Co.,* 222 U.S. 541, 547.

**III. IN ITS TREATMENT AND DISPOSITION OF THE ISSUE OF PHILADELPHIA-BALTIMORE IRON ORE RAILROAD FREIGHT RATE PARITY TO THE WHEELING-STEUBENVILLE-YOUNGSTOWN AREA THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN APPLYING INCORRECTLY TO THE EVIDENCE OF RECORD THE PERTINENT PROVISIONS OF THE INTERSTATE COMMERCE ACT AND THE NATIONAL TRANSPORTATION POLICY.**

The question of the propriety of the approach taken by the court below in exercising the function of judicial review with respect to the findings and conclusions

of the I.C.C. on the issue of Philadelphia-Baltimore railroad iron ore freight rate parity is so substantial as to require plenary consideration by the Supreme Court, with briefs on the merits and oral argument for another compelling reason. We here refer to the question whether the U. S. District Court has misconstrued the pertinent provisions of the Interstate Commerce Act and of the National Transportation Policy.

Without seeking to treat this question in all its aspects at this stage, two facets can be discussed to illustrate its substantial importance, namely (1) the court's treatment of the matter of comparative overland distances between Baltimore and Philadelphia on the issue of undue and unreasonable preference and prejudice and (2) the court's treatment of the National Transportation Policy particularly in its bearing on a transportation system adequate to meet the needs of the national defense. For, in these two categories, *inter alia*, the court saw fit to draw different inferences and conclusions than the Interstate Commerce Commission.

The subject of comparative distances, including those from Baltimore and Philadelphia to the destination territory involved, was carefully considered and made the subject of precise findings by the I.C.C. in both of its reports. *Iron Ore From Eastern Ports To C.F.A. Points,* 291 I.C.C. 527, 539-541, 548-550, 553, 554; 299 I.C.C. 195, 201-202, 204, 208. The court below saw fit also to treat of the factor of distance, but stressed only short line distances or short tariff distances, reflecting differences of 47 miles and 24 miles respectively in favor of Baltimore as compared to Philadelphia. *The Baltimore and Ohio Railroad Co.*

v. *U. S. A.*, 151 F. Supp. 254, 275. This the Commission considered along with all the other evidence on this subject including for example, the fact, uncontroverted of record, that the actual operating route of movement on iron ore shipped via the Pennsylvania Railroad to the 17 destinations from Philadelphia is only 11 miles greater than via its actual operating route from Baltimore. *Iron Ore From Eastern Ports to C.F.A. Points,* 291 I.C.C. 527, 539, 540; 299 I.C.C. 195, 201. This is clearly within the category of *de minimis.*

The view of the Court below that the I.C.C. " . . . gave no weight whatever to the factor of distance . . ." is little short of incredible! *The Baltimore and Ohio Railroad Co.* v. *U. S., supra,* p. 275. It is also to be noted that despite the fact iron ore from both Philadelphia and Baltimore must pass through Pittsburgh to reach Youngstown and other points in the destination territory, the court below affirmed the I.C.C. and sustained Baltimore-Philadelphia iron ore railroad freight rate parity to Pittsburgh, without any apparent concern for the factor of differing distances, deemed so vital with respect to Youngstown and other competitive points a short distance beyond Pittsburgh.

The above clearly presents the vital question of whether the court below in an unwarranted manner has exceeded its power in reviewing the decision and order of the I.C.C. It is our position that such is the case in the light of a long series of decisions of the Supreme Court. See *Illinois Central R. Co.* v. *Interstate Com. Com.,* 206 U.S. 441, 466; *Interstate Com. Com.* v. *Union Pacific R.R.,* 222 U.S. 541, 547, 548; *Virginian Ry.* v. *United States,* 272 U.S. 658, 665, 666; *St. Joseph Stock Yards Co.* v. *United States,* 298

U.S. 38, 51; *Swayne & Hoyt, Ltd.* v. *U. S.*, 300 U.S. 297, 304; *Labor Board* v. *Waterman S.S. Co.*, 309 U.S. 206, 226; *U. S.* v. *Pierce Auto Lines*, 327 U.S. 515, 535, 536; *Universal Camera Corp.* v. *Labor Board*, 340 U.S. 474, 488.

Without protracting the demonstration of the substantiality and the importance of the question here considered, suffice it to say that the court below indulged in similar serious and prejudicial error in its treatment of the National Transportation Policy, and most particularly with respect to the Congressional mandate that the national transportation system must be preserved and developed so as to be adequate, *inter alia*, to meet the needs of the national defense.

Extensive and compelling evidence was introduced in the record before the Commission as to the importance of having at least the two ports of Baltimore and Philadelphia on a railroad freight rate parity with respect to imported iron ore destined to the 17 destinations involved. The traditional availability of at least two ports of entry on iron ore railroad freight rate parity was shown with respect to domestic iron ore. This had been the practice in the interest of flexibility and efficiency of supply, particularly in view of the enormous difficulties involved in shut-down of iron and steel producing operations in the event of iron ore supply failure or undue delay in receipt of the ore. The experience in World Wars I and II with respect to the importance of usable and adequately equipped ports of entry on vital traffic was also treated in the evidence before the I.C.C. The fact was demonstrated that the costly facilities for the handling of import iron ore at Philadelphia required for receipt and transfer of the ore ultimately destined to the 17 points in-

volved simply could not be maintained and developed without railroad rate parity with Baltimore.

Without such Philadelphia-Baltimore rate parity in the event of war or national emergency, in the event of incapacity or over-burdening of the iron ore handling facilities at Baltimore, with completely inadequate facilities at Philadelphia, the national safety could very well be seriously threatened, if not actually jeopardized. Such a fundamental consideration of the national interest obviously supersedes any possible local interest at Baltimore looking to monopoly or quasi-monopoly of import iron ore traffic to the Wheeling-Steubenville-Youngstown area. The Commission considered all the evidence before it and found on the whole record that Baltimore-Philadelphia iron ore railroad freight rate parity was lawful in the light of the National Transportation Policy. *Iron Ore From Eastern Ports To C.F.A. Points,* 291 I.C.C. 527, 548, 554; 299 I.C.C. 195, 202, 209.

Reviewing the I.C.C. decision and order the court below glosses over the factor of the national defense as embodied in the National Transportation Policy. *The Baltimore and Ohio Railroad Co.* v. *U. S., supra,* p. 275. In essence the court substituted its own judgment for that of the Commission on this vital issue. The Supreme Court should here give plenary consideration to the propriety and lawfulness of such action by the court below. The final determination of this question is of the greatest importance to the application of the National Transportation Policy to the transportation industry.

**IV. THE COURT BELOW COMMITTED SERIOUS AND PREJUDICIAL ERROR IN ITS TREATMENT AND DISPOSITION OF THE ISSUE OF PHILADELPHIA-BALTIMORE RAILROAD FREIGHT RATE PARITY TO THE WHEELING-STEUBENVILLE-YOUNGSTOWN AREA BY SUBSTITUTING THE JUDGMENT OF THE COURT FOR THAT OF THE INTERSTATE COMMERCE COMMISSION AND ORDERING THE PROCEEDING REMANDED FOR SO-CALLED ESSENTIAL BASIC FINDINGS ON OCEAN TRANSPORTATION COSTS AND PROSPECTIVE TONNAGE IMPORTATIONS OF FOREIGN IRON ORE, WHEN ADEQUATE FINDINGS THEREON WERE ACTUALLY MADE BY THE COMMISSION.**

The Supreme Court should also give plenary consideration, after briefs and oral argument, to the question here presented as to the extent to which the court below was lawfully entitled to remand the proceeding to the I.C.C. for more explicit findings (1) on the question of ocean transportation costs and (2) prospective tonnages of foreign iron ore importations with respect to the ports of Philadelphia and Baltimore.

Actually the Interstate Commerce Commission made explicit, clear-cut and unequivocal findings on both of the above matters. The subject of comparative ocean transportation costs is made the subject of findings, for example, at pages 198 and 199 of the final report of the Commission. At pages 202, 203 and 209 of the same report the I.C.C. made clear findings on the subject of past, present and prospective tonnage movements of iron ore from foreign sources through the ports of Philadelphia and Baltimore. The I.C.C. found the record persuasive that the iron-ore tonnage through Baltimore will probably continue to increase with rate parity contemporaneously maintained at Philadelphia. *Iron Ore From Eastern Ports To C.F.A. Points,* 299 I.C.C. 195, 209.

These more than meet the requirements as to adequacy and specificity of findings by the Interstate

Commerce Commission. It is not the function of the reviewing court below to substitute its inferences and judgment for those of the Commission when, as here, the latter are clearly supported by substantial evidence. Neither is it the right or duty of the court below to apply its own notions of the detail in which a report and order of the Commisison should be written, so long as the I.C.C. has set forth the basic findings and conclusions required. Mere editorializing or mere selective refinement of language in the report and order of the federal administrative agency, at bottom, is all the court below has really done as the basis for its order of remand on the issue of Philadelphia-Baltimore iron ore railroad freight rate parity. In so doing, the court clearly went far beyond its authority and duty. See *United States* v. *Louisiana,* 290 U.S. 70, 80; *Mississippi Valley Barge Co.* v. *U. S., supra,* 286, 287; *Universal Camera Corp.* v. *Labor Board, supra,* 488; *Luckenbach, S.S. Co.* v. *United States,* 122 F. Supp. 824, 827, 828, affirmed 347 U.S. 984.

The lawfulness of the action of the court below in purporting to find deficiencies in the report and order of the I.C.C. with respect to essential findings and remanding the proceedings when the findings have actually been made by the Commission most certainly presents a substantial question within Rule 15(2)(g) of the rules of the Supreme Court.

## CONCLUSION

For the reasons stated, it is submitted that the questions presented by this appeal are so substantial as to require plenary consideration by the Supreme Court of the United States, with briefs on the merits and

oral argument, for their resolution. We therefore, pray that jurisdiction be noted and that the order, judgment and decree of the court below be reversed in respect to the issues and questions raised by this appeal.

Dated at Washington, D. C. this 16th day of September, 1957.

Respectfully submitted,

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